

Jeffry Brueggeman
General Attorney

SBC Telecommunications, Inc.
1401 I Street, N.W., Suite 400
Washington D.C 20005
Phone: (202) 326-8847
Fax: (202) 408-4801



March 7, 2003

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **NOTICE OF EX PARTE**
In the Matter of Appropriate Framework for Broadband
Access to the Internet Over Wireline Facilities
CC Docket No. 02-33

Dear Ms. Dortch:

On February 3, 2003, James K. Smith, Director – Federal Regulatory and Jeffry Brueggeman, General Attorney representing SBC Telecommunications, Inc. (SBC) met with Carol Matthey, Jane Jackson, Brent Olson, Michael Carowitz, Cathy Carpino, William Kehoe, Terri Natoli of the Wireline Competition Bureau and Harry Wingo of the Office of the General Counsel of the Federal Communications Commission to discuss the above reference proceeding. The attached presentation was distributed at the meeting.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter and attachment are being electronically filed. I ask that this letter be placed in the files for the proceedings identified above.

Please call me should you have any questions.

Sincerely,

/s/ Jeffry Brueggeman

Attachment

CC:	C. Matthey	C. Carpino
	J. Jackson	W. Kehoe
	B. Olson	T. Natoli
	M. Carowitz	H. Wingo

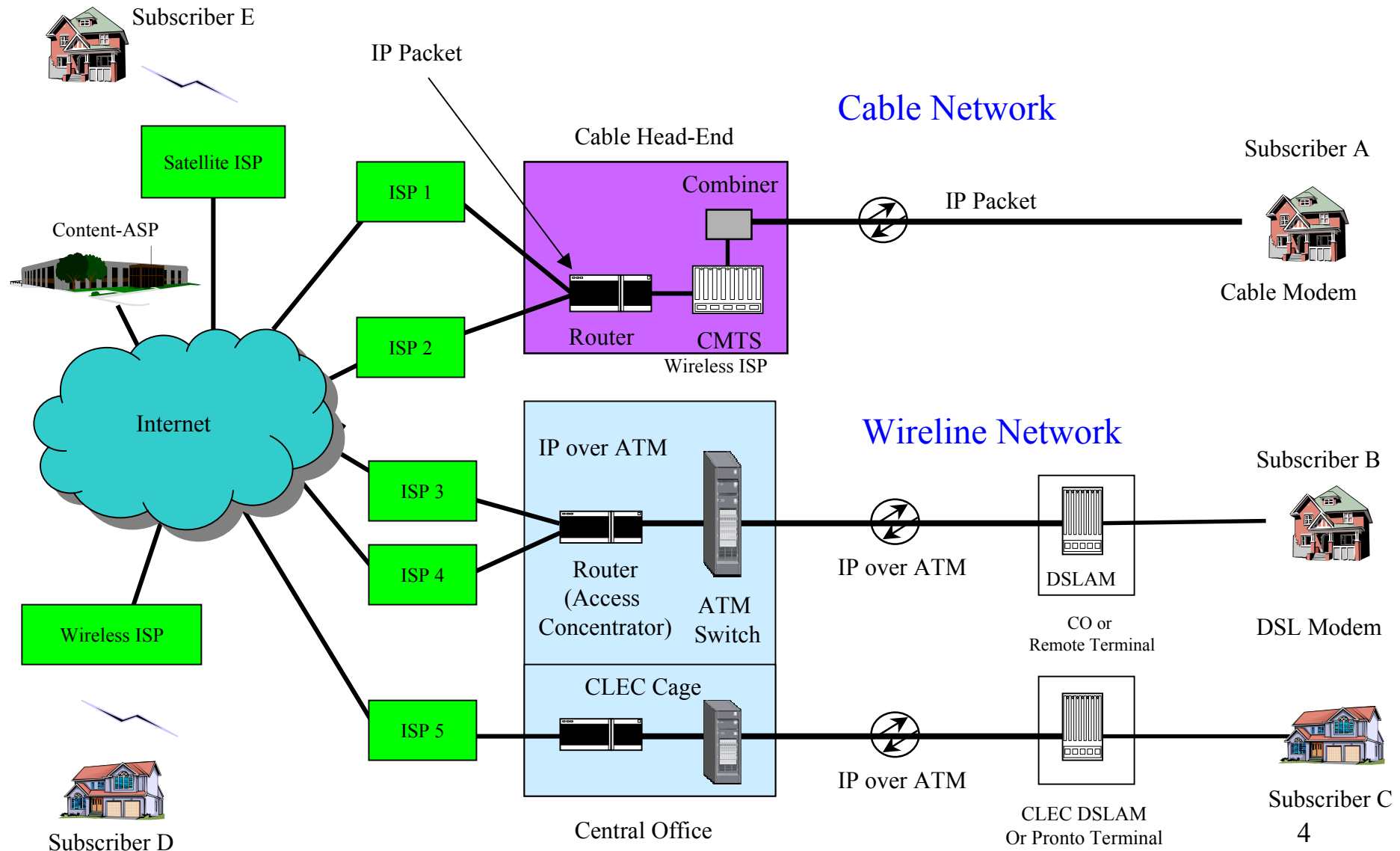


Pro-Consumer Approach to
Broadband Internet Access
March 6, 2003

- Consumer welfare should drive decision making
- Uniform framework is required across competing platforms
- Internet should exist in minimally regulated space
 - Commission should err on side of oversight versus prescriptive regulation -- solve problems if and when they arise
 - Any regulation should be narrowly focused to address specific problems
 - *Computer Inquiry* framework is unnecessary and impedes innovation
- Title I is the right framework

- Internet Service Provider (ISP)
 - ISPs link end-users to public Internet
 - ISPs may also provide content, applications, etc.
 - No mandatory multiple ISP requirements
 - No evidence of market failure necessitating intervention
 - Costs of regulation would outweigh benefits to consumers
 - Mandatory ISP access is not necessary to provide consumer benefits of ISP or ASP diversity
- Content and Application Service Providers (ASPs)
 - ASPs provide content, applications and/or services via the Internet
 - Consumer welfare issues are independent of whether multiple ISPs are serving end-users over the same broadband platform
 - Consumer access to content
 - Stimulation of new and innovative services

Intermodal and Intramodal Competition

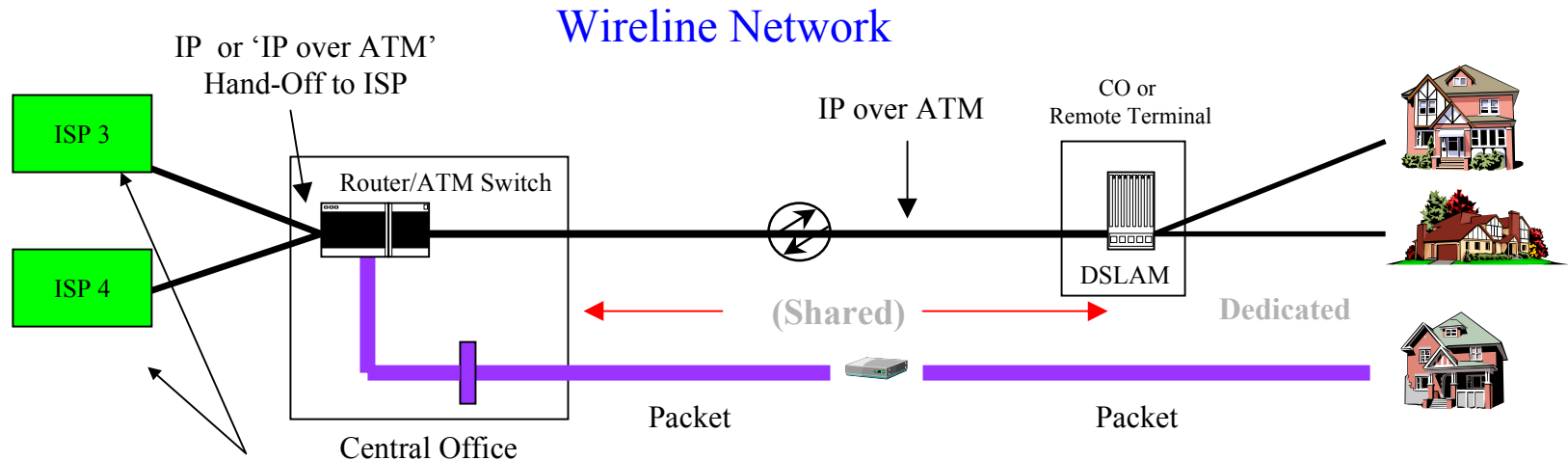
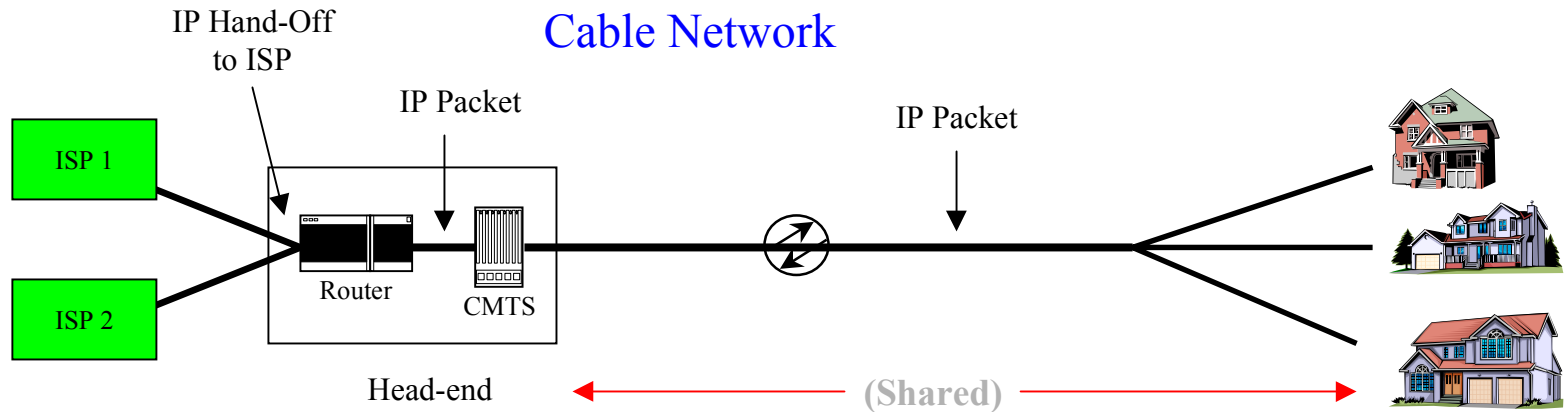


Uniformity: Cable and Wireline Networks Have Same Network Issues for Multiple ISPs



- Broadband access is provided over shared packet loop facilities
- ISP access occurs at head-end for cable and central office for wireline
- No technical basis for differentiating wireline and cable
- Routing techniques are well established -- wireline is using methods common to cable
- Issue is cost -- network management, database management, OSS -- which is common to both cable and wireline

Both Cable and Wireline Use Shared Packet Loop Paths for Broadband Internet Access



If handed an 'IP over ATM' bit stream, the ISP strips off the ATM overhead - leaving it with IP only.

A CMTS coupled with a cable modem provides basically the same functionality as a DSLAM coupled with a DSL modem.

Uniformity: Any ISP Access Requirements Must be Consistent Across Competing Platforms



- **Public Interest:** Consumer welfare can't justify differentiation
 - No technical basis for cable/wireline differentiation
- **Economics:** Both cable and wireline networks are faced with similar costs, routing, network, and bandwidth managements issues in providing broadband ISP access
- **Cost/Benefit Analysis:** Regulatory cost/benefit outcome is the same for both cable and wireline
 - Case for regulating cable as market leader would be more compelling -- irrational to impose more onerous requirements on wireline
- **Competition:** Issues driving need for any mandatory requirements are the same across competing broadband platforms

Minimal Regulation: *Computer Inquiry* Rules Have Become Anti-Technology and Anti-Innovation



- Rigid *Computer Inquiry* structure is premised on:
 - Isolating a “telecommunications service” in every information service
 - Establishing a CEI interface between the two services
 - Subjecting the telecommunications service to onerous Title II common carrier regulation
- “Stand-alone” telecommunications service requirement forces separation of telecommunications capabilities from information processing capabilities:
 - Restricts full utilization of technology integration in design and evolution of broadband networks
 - Restricts full utilization of technology integration in developing broadband services
- Limits wireline providers’ ability to offer new and innovative integrated broadband services to consumers

Minimal Regulation: *Computer Inquiry* Rules Restrict ISP Broadband Options



- Rigid *Computer Inquiry* rules restrict relationships with ISPs
 - Mandate a common carrier structure for ISP access
 - preclude market-based approaches to business relationships
- Flexibility is needed in structuring business relationships for broadband services
 - Some ISPs recognize that tariff regulation impedes development, design, package, and provision of new broadband services
 - SBC/USIIA MOU predicated on replacing common carrier obligations with market-based commercial arrangements
- *Cable Modem Ruling* recognized the need for innovative relationships as this nascent market develops
 - Joint provisioning, revenue sharing and private carriage -- opposite of *Computer Inquiry* rigidity

Minimal Regulation: *Computer Inquiry* Rules Distort Competition



- NCTA acknowledges that current regulatory disparity makes wireline companies “a less effective competitor to cable”
(NCTA Comments Docket 02-52 at 42)
 - Cable is not burdened by costs of accommodating multiple ISPs
 - Cable is not constrained in offering integrated broadband services
 - Cable is not constrained by Title II in developing new commercial arrangements with ISPs
- Disparate regulatory costs distort competitive pricing, and service limitations impede competitive offerings to consumers
- Wireline sunk costs are not a basis for differentiation
 - Network and operational costs associated with multiple ISP access are not one time costs, but ongoing
 - ILECs must invest heavily to match cable’s broadband capability

Computer Inquiry Rules are Unnecessary for Broadband Internet Access



- Predicate for *Computer Inquiry* rules does not exist:
 - No “one-wire” world
 - No pre-divestiture “Bell System” with vertical integration for R&D, manufacturing
- Commission has already rejected the rigid *Computer Inquiry* framework for cable broadband access
 - No “radical surgery” for cable broadband services
 - Title II regulatory framework is not necessary in structuring ISP business relationships -- even where a separate telecommunications component is identified
- New model is necessary if there is to be government intervention and regulation
 - Wireline as broadband Internet access “ provider of last resort” for ISPs is not sustainable

ISPs Will Have More Broadband Options From Wireline Than From Cable



- Use of copper UNE loops in CLEC/ISP arrangements
- Use of DS-1, DS-3 UNEs in CLEC/ISP arrangements, subject to granular review
- DS-1 and DS-3 tariffs
- Commercial arrangements -- SBC commitment to make commercial agreements for broadband Internet access available (SBC/USIIA MOU)

Title I : Provides Flexible Framework for Competitive Broadband Market



- Title I provides framework to address broadband ISP/ASP issues in a competitively neutral and uniform manner across competing platforms
- Title I provides competing broadband platform providers maximum flexibility to structure business relationships with ISPs
 - Market should develop through commercial arrangements
 - Oversight (not regulation) is warranted, given the competitive evolution of broadband Internet access services
- Commission retains authority under Title I to address consumer welfare issues and address market failures should they arise

- Wireline Title I:
 - Government should avoid artificially structuring Internet services
 - Allow Internet services to develop on a competitive basis without regulatory induced distortions
 - Eliminate “radical surgery” of *Computer Inquiry* regime
 - Remove impediments to new and innovative Internet services
 - *Cable Modem Ruling* cost/benefit analysis is applicable
 - Allow multiple ISP access arrangements to develop on a commercial basis, or on a uniform basis across competing platforms if regulatory intervention is required
- Cable Title I:
 - Consistent resolution of broadband multiple ISP access across competing cable/wireline platforms is required
- Any path forward should avoid premature action